

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT H. NESBITT JR.,

Plaintiff,

No. CIV S-03-2243 MCE DAD P

vs.

NEIL WAKABAYSHI, et al.,

Defendants.

ORDER

_____/

Plaintiff seeks sanctions under Fed. R. Civ. P. 37(b) for the failure of the Solano County Sheriff's Department and the Solano County District Attorney's Office to produce certain files prior to April 4, 2005. Plaintiff requests that the sheriff's department and the district attorney's office be held in contempt and sanctioned. Plaintiff also seeks entry of default judgment against the defendants or reimbursement for the "flagrant, bad faith and callous disregard for the obligations as prescribed under the Rules of Civil Procedure."

In opposition to the motion for sanctions, defendants assert that there is no basis for sanctions against them because no defendant in this action was ordered to produce the files in question and the files are not in the custody or control of any of the defendants. Defendants further assert that the files were produced to plaintiff on April 11, 2005, and April 12, 2005, and that plaintiff was not prejudiced by any delay in their production.

1 Pursuant to this court's order filed March 25, 2005, files were to be produced by
2 non-parties Solano County Sheriff's Department and Solano County District Attorney's Office
3 within five court days after the order was served. On March 25, 2005, the order was served by
4 mail on counsel for the non-parties. In accordance with Fed. R. Civ. P. 6, the non-parties were
5 required to produce the files on or before April 6, 2005. Plaintiff's motion dated April 4, 2005,
6 was filed prematurely and is now moot. Plaintiff has not presented any basis for sanctions
7 against the defendants. Plaintiff's motion for sanctions will therefore be denied in all respects.

8 Plaintiff's motion for sanctions was accompanied by a document titled "Plaintiff
9 Notice of Withdrawal of Motions." All of plaintiff's motions and supplemental motions to stay
10 or delay rulings on defendants' summary judgment motions were granted in part in the order filed
11 in this action on March 25, 2005. Parties may not withdraw motions after the court has ruled on
12 them. Plaintiff's notice will be disregarded as moot. On April 13, 2005, plaintiff submitted a
13 document dated March 17, 2005, concerning an objection filed by defendants on March 3, 2005.
14 The belated filing of this document is unexplained, and the matter is moot.

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. Plaintiff's April 11, 2005 emergency motion for sanctions (docketed as #308)
17 is denied; and

18 2. Plaintiff's April 11, 2005 notice of withdrawal of motions (docketed as #306)
19 and April 13, 2005 response to defendants' objection to plaintiff's supplemental motion for delay
20 (docketed as #309) will be disregarded as moot.

21 DATED: April 15, 2005.

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23 _____
24 DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE
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